

1 Andrew Rockwell
 2 4426 Via San Rafael
 3 Las Vegas, NV 89103
 4 Pro Se

5 **UNITED STATES DISTRICT COURT**

6 **DISTRICT OF NEVADA**

7 HAKKASAN LV, LLC,) Case No.: 2:13-cv-01999-JCM-NJK
 8)
 9 HAKKASAN LIMITED)
 10 Plaintiffs,)
 11 vs.)
 12 Andrew Rockwell,)
 13 Defendant

ANSWER

14 COMES NOW Andrew Rockwell in answering the allegations of the Complaints on
 15 file herein, affirms, denies and alleges as follows:

16 Answering Count 1 - Trademark Infringement and Counterfeiting under the Lanham
 17 Act, 15 U.S.C. §1114 herein, Defendant denies all allegations.

18 Answering Count 2 - Unfair Competition under 15 U.S.C. § 1125(a) herein,
 19 Defendant denies all allegations.

20 Answering Count 3 - Cybersquatting under 15 U.S.C. § 1125(d) herein, Defendant
 21 denies all allegations

22 Answering Count 4 - Common Law Trademark Infringement herein, Defendant affirms
 23 in part based on his knowledge but denies that loss of revenue was sustained as result
 24 of ownership of HakkasanNightclubVegas.com or content contained therein

25 Answering Count 5 - Deceptive Trade Practices Under N.R.S. 598.0903, et seq.
 26 herein, Defendant denies all allegations.

27 Answering Count 6 - Fraud herein, Defendant denies all allegations.

Answering Count 7 – Intentional Interference with Prospective Economic Advantage herein, Defendant denies all allegations.

Answering Count 8 - Copyright Infringement under 17 U.S.C. § 501 herein,
Defendant denies all allegations.

Pursuant to Rule 12(b)(5) of the Nevada Rules of Civil Procedure, Defendant Andrew Rockwell (Defendant), hereby moves this Court to dismiss all of the claims for relief asserted against him by Plaintiffs'. In the alternative, Defendant moves for a more definite statement of the claims purported against Defendant. This Motion is based on the following Memorandum of Points, all other papers and pleadings on file with the Court, and any oral argument the Court may permit.

The Defendant now brings forth the following Affirmative Defenses:

MEMORANDUM OF POINTS

Defense 1 - Nominative Fair Use

Defendant answering the Complaint herein, alleges that all allegations and counts brought forth therein fails to state a claim for which relief can be granted. Plaintiffs allegation that Defendants' use of the "Hakkasan" mark in commerce is to "deceive consumers" into "purchasing counterfeit services" is categorically false. Should consumers avail themselves of the website/ service they receive authentic VIP services (bottle service) at the actual Hakkasan Nightclub as we do not have the unlimited resources available to build a counterfeit club, or distill our own liquor for bottle service to deceive clients. As such, if one was to buy a pair of brand new Nike shoes from a local store at a discounted price, would the courts side with Nike if they brought litigation against that individual for putting the shoes for sale on eBay using images of Nikes trademarked logo or pictures of the shoes themselves? It's doubtful. The courts have previously asserted that the requirements to resell a product is that it must have been lawfully purchased and authentic. Should consumers

1 click the "Purchase Tickets" buttons attached hereto as **Exhibit 1**, on the
2 HakkasanNightclubVegas.com website, they are re-directed to our affiliate page with
3 TicketDriver.com, which the Plaintiff states in *Paragraph 21* of the Complaint "...all
4 tickets purchased directly from Hakkasan including Ticket Driver are authentic"
5 attached hereto as **Exhibit 2**

6 As such, Plaintiffs still receive full monetary compensation from the purchase of
7 tickets or from our booking of VIP services with clients, and there is no irreparable
8 injury, nor monetary loss to Plaintiff.

9

10 **DEFENSE 2 - Nominative Fair Use**

11 Defendant answering the Complaint herein, alleges that all allegations and
12 counts brought forth therein fails to state a claim for which relief can be granted.
13 Defendant asserts that the disclaimer on the front page of the website See **Plaintiffs'**
14 **Exhibit 5, page #35** states that site is merely a "source" for information about
15 Hakkasan Nightclub, and as such does not represent any affiliation with Plaintiffs'
16 venue. Furthermore, because nominative fair use does not implicate the source-
17 identification function that is the purpose of trademark, it does not constitute
18 unfair competition.

19

20 **DEFENSE 3 - Nominative Fair Use**

21 Plaintiffs' allegations state that Defendants use of
22 "HakkasanNightclubVegas.com" as a domain name infringes upon their famous and or
23 distinctive mark. Defendant cites a recent district court case from another circuit
24 which deals with an exact circumstance to these complaints, and ratified by written
25 agreements. In **TOYOTA MOTOR SALES v. TABARI** the opinion of Judge Kozinski found
26 Nominative Fair Use of the Tabaris' use of Toyota's federally registered trademark to
27 apply to their internet domain names Buy-A-Lexus.com and BuyOrLeaseALexus.com. The
28 court found that "when customers purchase a Lexus through the Tabaris they receive a

1 genuine Lexus car." and that " Toyota is using this trademark lawsuit to make it more
2 difficult for consumers to use the Tabaris to buy a Lexus." Similarly, as shown
3 previously (See **Exhibit 1&2**), when customers use the HakkasanNightclubVegas.com
4 website for tickets or services, they receive authentic tickets and bottle service
5 within the club. If the court finds that Defendant Rockwell is within his rights to
6 own the web domain/ website under this definition of Nominative Fair Use, that there
7 is no bad-faith intent to profit or deceive. As shown above, Plaintiffs' Complaint
8 fails to state a claim upon which relief can be granted against Defendant, even when
9 Plaintiffs' allegations are accepted as true. Therefore, this Court should dismiss
10 this complaint with prejudice.

11

12 **DEFENSE 4 - Failure to State a Claim**

13 Internationally Hakkasan Limited is known and recognized as a restaurant
14 company, having only opened their first nightlife venue less than a year ago in Vegas
15 in April of 2013. The standards of Common Law Trademark tend to lean towards Common
16 Law status being granted when using a trademark within a geographic location/industry
17 for an extended period of time.

18 Since prior to April 2013, there was no Hakkasan Nightclub, or restaurant in
19 Las Vegas, claiming Common Law Trademark infringement is redundant since there was not
20 ample time to (a) establish duration and extent of use of the mark in connection
21 with the goods and services with which the mark is used; (b) duration and
22 extent of advertisement and promotion of the mark in this State; (c) channels
23 of trade for the goods or services with which the mark is used; and (d) the
24 degree of recognition of the mark in the trading areas and channels of trade
25 in this State used by the owner of the mark and the person against whom the
26 injunction is sought. As shown above, Plaintiffs' Complaint fails to state a claim
27 upon which relief can be granted against Defendant, even when Plaintiffs' allegations
28

1 are accepted as true. Therefore, this Court should dismiss this complaint with
2 prejudice.

3 **DEFENSE 5 - Failure to State a Claim**

4 Defendant denies claim based on banner statement header on
5 HakkasanNightclubVegas.com (See **Plaintiffs' Exhibit 5, page#33**) which we hold as a
6 disclaimer of non-affiliation with Hakkasan Nightclub. Furthermore, the nominative fair
7 use doctrine allows for such truthful use of a mark, even if the speaker fails to
8 expressly disavow association with the trademark holder, so long as it's unlikely to
9 cause confusion as to sponsorship or endorsement, which we believe was fully achieved
10 by the banner disclaimer at the top of the website. Furthermore Speakers are under no
11 obligation to provide a disclaimer as a condition for engaging in truthful, non-
12 misleading speech. As shown above, Plaintiffs' Complaint fails to state a claim upon
13 which relief can be granted against Defendant, even when Plaintiffs' allegations are
14 accepted as true. Therefore, this Court should dismiss this complaint with prejudice.

15

16 **DEFENSE 6 - Nominative Fair Use**

17 Defendants' affirm that the images and event information contained within the
18 website in question are compiled together using information from the Venue Driver
19 event and ticketing page and various images from news sources and are Nominative Fair
20 Use as defined in **TOYOTA MOTOR SALES v. TABARI**. Though not directly "authorized" by
21 the venue, we hold agreements with various hosts, promoter and management of Hakkasan
22 Nightclub, who we negotiate terms and conditions for services we help to provide.
23 Furthermore, Defendants' affirm that any monies generated through use of the website
24 directly benefit Plaintiffs. Defendant further declares that by proxy of affiliation
25 with Angel Management Group, that they are authorized promoters/marketing for Hakkasan
26 Nightclub as shown in Defendants' **Exhibit 2** which shows our affiliate code, and
27 affiliate hyperlink to TicketDriver.com that we have previously established in
28 Paragraph 1's response. Defendants' are not committing any fraud against the public,

1 or Plaintiff. Defendants further point out that numerous companies in Las Vegas
2 specialize in providing VIP services for clients within nightclubs and lounges in the
3 city who are not "authorized agents" yet generate business and revenues for venues
4 across the city, many of whom market themselves using keywords, string text, and
5 social media to generate leads for services. Using the search string "Hakkasan VIP"
6 turned up no less than 8 different companies claiming either guest list, or VIP
7 services for Hakkasan Nightclub within the first 4 pages of the Google's search
8 results. Assumedly, not all these websites/ companies/ independent hosts are
9 authorized resellers of VIP/bottle services at Hakkasan, nor are they are likely
10 granted license to use trademarked images, marks or copy and yet the Plaintiffs are
11 not currently pursuing litigation against any of them. See Defendants' **Exhibit 4**. As
12 shown above, Plaintiffs' Complaint fails to state a claim upon which relief can be
13 granted against Defendant, even when Plaintiffs' allegations are accepted as true.
14 Therefore, this Court should dismiss this complaint with prejudice.
15

16 **DEFENSE 7 - Affirmative Defense**

17 Defendant re-affirms that because of the pass through traffic for purchasing of
18 tickets and event services as well as the VIP services booked directly into
19 Plaintiffs' venue, that no interference with economic advantage or monetary loss has
20 occurred. As show above, the Plaintiffs have failed to state a complaint upon which
21 relief can be granted against Defendant, even when Plaintiffs allegations are accepted
22 as true. Therefore, this Court should dismiss Plaintiffs' Complaint with prejudice, or
23 at least, require Plaintiffs to clarify the basis for their allegations against
24 Defendant.
25

26 **DEFENSE 8 - Failure to State a Claim**

27 Defendant recognizes that Plaintiffs have filed for Federal Copyright
28 protection for photographs, source code (which is not protected due to Plaintiffs'

1 website being built on Wordpress content management system which is using a slightly
2 modified theme template called Encore that is available for purchase by anyone from
3 the themes author though the website Themeforest.com) authorized and therefo, text,
4 and images used on its website, but Defendant was not informed of this potential
5 infringement in the Cease and Desist letter sent Sept 19th of 2013, nor was a copy of
6 those copyright infringement claims or applications ever provided. The C&D only stated
7 that the use of the domain name HAKKASNNIGHTCLUBVEGAS.COM was at issue as the
8 Plaintiffs felt it infringed on their pending trademark filing. At the filing of this
9 complaint, the website was in maintenance mode displaying nothing more than a black
10 page with wording stating that the website was down for maintenance, while the
11 potentially infringing images were being removed. Infringement is not currently and
12 has not been occurring since the C&D sent in Sept. Because of the Plaintiffs' filing
13 of an *Ex Parte Injunction and Restraining Order* with the courts, our registrar has
14 locked the domain name and blocked our access to further modify or change the website
15 since October of 2013. As such Defendant sees this claim for relief as baseless since
16 the alleged infringement was already in the process of being reconciled when Plaintiff
17 filed the initial injunction with the District Courts as well as when Plaintiff filed
18 their *First Amended Complaint For Damages and Injunctive Relief*. As show above, the
19 Plaintiffs have failed to state a complaint upon which relief can be granted against
20 Defendant, even when Plaintiffs allegations are accepted as true. Therefore, this
21 Court should dismiss Plaintiffs' Complaint with prejudice, or at least, require
22 Plaintiffs to clarify the basis for their allegations against Defendant.

23

24 Conclusion

25 Based on the foregoing, Defendant respectfully requests that this Court
26 dismiss, with prejudice, Plaintiffs' claims for relief asserted against Defendant,
27 including the claims for: (1) Trademark Infringement and Counterfeiting; (2) Unfair
28 Competition; (3) Cybersquatting; (4) Common Law Trademark Infringement; (5) Deceptive

1 Trade Practices; (6) Fraud; (7) Intentional Interference with Prospective Economic
2 Advantage; and (8) Copyright Infringement. Alternatively, Defendant requests that
3 Plaintiffs' be compelled to allege specific facts that show Plaintiffs' alleged
4 entitlement to relief against Defendant. These complaints only have been filed by
5 Plaintiffs because Defendants refusal to surrender the "infringing" web domain name
6 and \$16,000 out of court settlement as Plaintiff demanded.

7 WHEREFORE, Defendant prays that the Plaintiff take nothing and the Defendant have
8 judgment against the Plaintiff and recover the costs of suit herein, and such other
9 relief the court may deem proper.

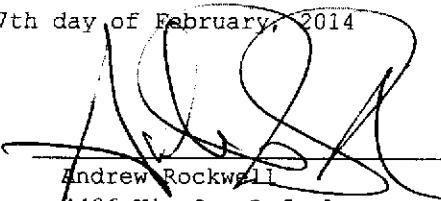
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11 Dated this 17th day of February, 2014
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Andrew Rockwell
4426 Via San Rafael
Las Vegas, NV. 89103
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Exhibit 1

MaxButtons: Button List

Brought to you by  **MaxButtons** makers of *MaxGalleria* and *MaxInbound*

[Buttons](#) [Go Pro](#) [Support](#)

12/20/14



▼ Apply

Bulk Actions

Button

Name and Description

Shortcode

Actions

AMG ↵

[maxbutton id="1"]

Edit | C

Buy Tickets!

To use this button, place the following shortcode anywhere in your site content: [maxbutton id="1"]

Basics

Name

AMG

Description

Something that you can directly edit to the button with.
Brief explanation about how to use the button is wise



The top is the normal button, the bottom one is the hover.

Buy Tickets!

Buy Tickets!

URL

The link when the button is clicked.

<http://ticketdriver.com/amg/buy/tickets?afct=B8AEX1H1>

Text

The actual words that appear on the button

Buy Tickets!

[Open in New Window](#)

Use rel="nofollow"

Change this color to see your button on a different background

Exhibit 2

venuedriver

VIP UNLTD

all venues



updates



events



guest lists



customers

Affiliate links

Your affiliate ticket sale link is: <http://ticketmaster.com/lineBuyTicket/17dc=BRAEX1H1>

Your affiliate reservation sign up link is: <http://www.venuedriver.com/amo/web/guest/reservation?afc=BRAEX1H1>

Your affiliate guest sign up link is: <http://www.venuedriver.com/amo/2008/web/guestlist?afc=BRAEX1H1>

AMG Advocate Marketing Program

Beta: Your social media statistics are available at the dashboard

Your performance

From: October 29, 2013 To: November 12, 2013 Update

Pass Statistics

barcode pass: 0 passes: 0 female: 0 male: 0

Mon, October 28 Tue, October 29 Wed, October 30 Thu, October 31 Fri, November 01 Sat, November 02 Sun, November 03 Mon, November 04 Tue, November 05 Wed, November 06 Thu, November 07 Fri, November 08 Sat, November 09 Sun, November 10 Mon, November 11

Exhibit 3

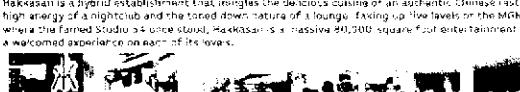
[Home](#) > [Nightclubs](#) > [Strip Clubs](#) > [Bachelor Party](#) > [Bachelorette Party](#) > [Shows](#) > [Hotels](#)

Bottle Service Las Vegas

[www.bottleservice.com](#)

[Book](#) [Bottle Service](#)

Hakkasan is a hybrid establishment that merges the delicious, cushiony feel of an authentic Chinese restaurant with the high energy of a night club and the laid-back nature of a lounge. Fixing up five levels on the MGM Grand property where the famed Studio 54 once stood, Hakkasan is a massive 40,000-square-foot entertainment space that one can A-welcomed experience on each of its levels.



Hakkasan's on-site restaurant takes up two of the five floors and provides an extensive menu of delicacies. Guests



DOWNLOAD + PLAY

Mobile Number

First Name

Last Name

Choose a Las Vegas Nightclub

Tropicana® MGM Grand®

Instagram Username

Reservation Date

How Many Guys Are In Your Group?

A screenshot of the Gilt Groupe website. At the top, there's a navigation bar with links for 'Page', 'Safety', 'Tools', and a search bar. Below the header, there's a banner for 'Gilt Clubs: Day Club' and 'Gilt Clubs: Nightclub'. The main content area features a deal for 'Free Entry to Hakkasan Nightclub'. The deal image shows a night scene of a city skyline with lights. Below the image, the text reads: 'Hakkasan is the hot new nightclub at MGM Grand and it's enormous: 20,000 square feet, capacity 7000+ people. Built on five levels, including a restaurant, estimates of its cost run as high as \$200 million. The club's capacity is more than King Lear's. The "Invisible Line" ticketing system guarantees entry for a limited time.' A 'REDEEM COUPON' button is at the bottom. The top right of the page shows a 'Gilt Club' logo with a stylized 'G' and 'CLUB' text. The bottom right features a 'MOST VIEWED THIS WEEK' section with links to 'Dove Camiza, the night's hottest bottle king hits another big rodeo in sports' and '10 nightclubs, cocktails, bairns, and just new bairns'. The footer contains links for 'About', 'Contact', 'Help', 'Gilt Groupe', 'Gilt Groupe: Day Club', 'Gilt Groupe: Nightclub', 'Gilt Groupe: Travel', 'Gilt Groupe: Home', 'Gilt Groupe: Food', 'Gilt Groupe: Beauty', 'Gilt Groupe: Fashion', 'Gilt Groupe: Books', 'Gilt Groupe: Music', 'Gilt Groupe: Sports', 'Gilt Groupe: Events', and 'Gilt Groupe: Design'.



61 of 72 PAGES

SEARCH ENGINE | DIRECT MAIL | RETAILERS | BUSINESS | ANNUAL REPORT | NEWSLETTER

SEARCH RESULTS

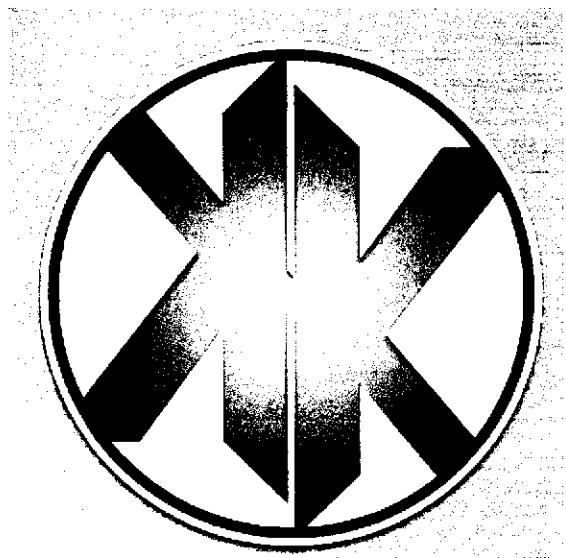
ATTACHMENTS

2 5 1 - 1972

1928] *W. H. DAWSON*

ANSWER

Exhibit 5



JK

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